

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 432 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHCHANDRA KHANDUBHAI MORE

Versus

NATWARLAL CHUNILAL BAMANIA  
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Appearance:

MR SH SANJANWALA for Petitioner

MR N V Anjaria for Mr SN SHELAT for Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2000

ORAL JUDGMENT

The petitioner, original defendant-tenant, by filing this Civil Revision Application under Section 29(2) of the Bombay Rents (Hotel and Lodging House Rates Control) Act, 1947 (for short 'the Act'), has challenged the judgment and decree dated February 7, 1984 passed by the learned Extra Assistant Judge, Surat in Regular Civil Appeal No.322/82 by which the learned Extra Asstt.Judge, while dismissing the appeal filed by the petitioner,

confirmed the judgment and decree of the Addl.Judge, Small Causes Court, Surat passed in Small Rent Suit No.278/79 whereby the opponent's suit for possession of the suit premises was decreed and the petitioner was directed to hand over vacant possession of the suit premises to the opponent on or before November 30, 1982.

2. The opponent filed Small Rent Suit No.278/79 in the Court of Addl.Judge, Small Causes Court, Surat against the petitioner, inter-alia, contending that the suit property situated in ward No.10, Nondth No.193 to 197, Kepapith, Surat belonged to the joint family of opponent of which the opponent was Karta. The petitioner was a tenant of the suit property at the rent of Rs.8/per month. It was alleged that the defendant did not pay rent regularly and hence the opponent served a demand notice on January 26, 1979 directing the petitioner to pay rent from 1.1.1975 to 31.1.1979. After the receipt of the notice, the petitioner paid the arrears of rent upto 3.2.1979. It was further alleged in the suit that the petitioner had built a house in Saruvan society near Navyug College, Rander Road, Surat and thereby acquired suitable residence and had gone to reside in that premises and since then was not using the suit property for a continuous period of two years and more before the filing of the suit. On the above stated grounds, the opponent filed the above suit to recover possession of the suit premises along with the arrears of rent.

3. The petitioner resisted the suit by filing written statement at Exh.12, inter-alia, contending that the contractual rent of Rs.8/- per month was not the standard rent and in fact the standard rent of the suit property was Rs.5/- per month. It was denied by the petitioner that he had built and acquired vacant possession of suitable residence in Saruvan society after coming into operation of the Rent Act. It was also denied by the petitioner that he did not use the suit premises for the purpose of residence for continuous period of two years or more prior to the date of filing of the suit. It was asserted by the petitioner that he was using the suit property for the purpose of residence and was always ready and willing to pay the rent but the opponent did not accept the rent from the petitioner. It was denied that the petitioner was a tenant in arrears. The petitioner also averred that the notice under the Act issued by the opponent was not legal and valid, and therefore, the suit be dismissed with costs.

4. On the aforesaid pleadings of the parties, the learned trial Judge framed issues at Exh.13. In support

of his case, the opponent-plaintiff examined himself at Exh.16. To prove that the petitioner acquired suitable accommodation in the Saruvan society, the plaintiff examined Bhakhubhai Laxmanbhai Karnikar at Exh.26. The petitioner examined himself at Exh.30 and his brother Bhaurao at Exh.33. The learned trial Judge, on appreciation of oral as well as documentary evidence held that the rent of the suit premises was Rs.8/- per month. The learned trial Judge also held that the opponent had proved that after coming into operation of the Rent Act, the defendant had acquired suitable residence so as to attract the provisions of Section 13(1)(1) of the Rent Act and ultimately on the basis of the above referred two conclusions a decree for possession was passed against the petitioner.

5. The petitioner filed Regular Civil Appeal No.322/82 in the District Court at Surat challenging the decree for possession passed by the trial court. The said appeal was heard by the learned Extra Asstt.Judge, Surat, who, after going through the entire Record and Proceedings of the case, dismissed the appeal and confirmed the decree for possession passed against the petitioner which has been challenged by the petitioner by filing this Civil Revision Application.

6. Learned counsel for the petitioner-original tenant Mr Sanjanwala has taken me to the entire evidence and submitted that the Courts below have failed to appreciate that the petitioner-tenant had not acquired suitable residence so as to attract provisions of Section 13(1)(1) of the Rent Act. Learned counsel submitted that the suit property was admeasuring 13' x 29' whereas the newly acquired property was of the area 13' x 49'. It is urged that in the family of the petitioner, there were totally 11 members and therefore, the property which was subsequently acquired cannot be called a suitable residence so as to attract provisions of Section 13(1)(1) of the Act. Learned counsel further urged that the brother of the petitioner had also come to stay with the petitioner, which fact was not taken into consideration by the Courts below. Learned counsel further contended that the petitioner had four daughters and two sons and three members of his brother's family and there were in all eleven members in the petitioner's family. It is submitted that the purpose of acquiring other accommodation was to accommodate all the above sated family members. The learned counsel, therefore, contended that while holding suitability of the residence, the Courts below ought to have taken into consideration the extent of given area available, size of

the family which is to be accommodated and the availability of the facilities or amenities therein. The learned counsel, therefore, contended that merely acquiring other accommodation will not attract the provisions of Section 13(1)(1) of the Rent Act, and therefore, this Revision Application be allowed and the decree for possession be set aside.

7. Learned counsel for the opponent Mr N V Anjaria has vehemently submitted that the defendant-petitioner in his evidence at Exh.30 had admitted that he had acquired suitable residence situated in Saruvan society, was sufficient to accommodate his family members. The counsel, therefore, submitted that in the written statement, the petitioner had not averred that his brother and his family was residing with the petitioner in the suit premises. Learned counsel for the opponent submitted that the question whether the petitioner had acquired suitable residence in which all the family members can be accommodated is a question of fact which cannot be looked into by this Court in this Revision Application because those findings have been recorded by both the Courts below and, therefore, they are being concurrent findings on fact, this Revision application be dismissed with costs.

8. The submission of the learned counsel for the petitioner is that the petitioner had not acquired suitable residence so as to accommodate all the family members and, therefore, provisions of Section 13(1)(1) could not attract and the decree for possession be set aside is meritless and deserves to be rejected. The petitioner Ramachandra More in Exh.30 in clear terms admitted that the accommodation which he had acquired in Saruvan society was sufficient and suitable to accommodate his family members. The fact that the petitioner had acquired suitable accommodation is not in dispute in this Revision Application. The Courts below had considered the extent of area which was subsequently acquired by the petitioner and hence came to the conclusion that the subsequent accommodation acquired by the petitioner was having all the amenities and facilities and the area of the newly acquired premises was sufficient to accommodate all the family members of the petitioner. The decision on which reliance is placed by the learned counsel for the petitioner in the case of Nathani Shivankumar v. Shah Dhanamal Maneklal, reported in 16 GLR 779 will not apply to the facts of this case. In the above case, the tenant had temporarily acquired accommodation and therefore, the Court held that provisions of Section 13(1)(1) of the Rent Act will not

attract. However, learned counsel for the petitioner vehemently submitted that suitability of a residence may depend upon the extent of living area available, the size of the family which is to be accommodated therein and the availability of facilities of amenities therein is not considered by the courts below while deciding whether the petitioner had acquired suitable accommodation. As observed earlier, the Courts below had taken into consideration the space and the amenities available in the actually acquired premises by the petitioner and had given specific finding that the said newly acquired premises was suitable to accommodate family members of the petitioner. In view of the evidence of the present case also, the decision relied on by the learned counsel for the petitioner in Nathani's case (supra) will not apply to the facts of this case. The learned counsel for the petitioner has also placed reliance on a decision of the learned Single Judge in Civil Revision Application No.1912 of 1984 decided on April 4, 1985 in the case of Mithalal Veljibhai v. Maheshkumar Narandas wherein the learned Single Judge has held that while deciding the question of suitable alternative accommodation, the size of the family has to be looked into. In my opinion, this decision will also not be of any help to the petitioner as the Courts below have taken into consideration all the relevant aspects i.e. the number of the family members of the petitioner's family, qua the area and amenities of the newly acquired premises and thereafter had given the findings that the newly acquired premises in all respects is suitable residence so as to attract provisions of Section 13(1)(1) of the Rent Act.

9. The Supreme Court in Patel Valmik Himatlal v. Patel Mohanlal Muljibhai, (1998) 7 SCC 383 has laid down that powers of the High Court under Section 29(2) of the Rent Act are revisional powers with which the High court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. The question whether the petitioner had acquired suitable accommodation after coming into operation of the Rent Act and whether that accommodation was sufficient to the family members of the petitioner's family is a question of fact and the courts below had

given a specific finding after appreciating the evidence adduced by the petitioner and, therefore, there is concurrent findings of fact by both the courts below. In view of the principles laid down by the Supreme Court in Patel Valmik Himatlal's case (supra), it will not be open to this Court to reopen the case and record a contrary finding.

10. These were the only submissions advanced by the learned counsel for the petitioner and the respondent. I do not find any merit in those submissions and therefore, this Civil Revision Application deserves to be dismissed and is accordingly dismissed. Rule discharged. No order as to costs.

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msp.